

**MEMORANDUM OF AGREEMENT BETWEEN SANTA FE COUNTY AND THE
SANTA FE COMMUNITY COLLEGE TO DESIGN AND IMPLEMENT A
MICROGRID TRAINING PROGRAM**

THIS AGREEMENT is made and entered into as of this 24 day of October, 2014, by and between Santa Fe County, hereinafter referred to as "County", a political subdivision of the State of New Mexico and Santa Fe Community College, with a principal address located at 6401 Richards Ave, Santa Fe, NM 87508, hereinafter referred to as "SFCC".

RECITALS

WHEREAS, the in 2010 the County adopted the Sustainable Growth Management Plan (SGMP) to include support efforts to address the region's development and use of renewable energy, decreased dependency on fossil fuel to enhance economic development initiatives; and

WHEREAS, the SGMP highlighted many energy efficiency, renewable energy and general sustainability goals, objectives, and strategies that all fit within the elements of a microgrid; and

WHEREAS, in January 31, 2012, the County passed Resolution No. 2012-19, a resolution supporting assessment of the feasibility, commercialization and development of microgrid systems within Santa Fe County, to enhance economic and workforce development, broad renewable energy penetration, and effective energy conservation solutions that benefit and further the region's sustainability efforts; and

WHEREAS, Resolution No. 2012-19 identifies the Santa Fe Community College (SFCC) as a laboratory to develop and deploy approaches for energy solutions and economic development; and

WHEREAS, SFCC will develop and establish a Microgrid Training Center (Laboratory) for microgrid workforce training and professional development include hiring a Microgrid Training Center Director; assemble a Microgrid Advisory Panel; and, through public and private partnerships for economic development related to energy supply businesses and spin-off technologies, help facilitate entrepreneurship, and business opportunities; and

WHEREAS, the purpose of this MOA is to provide for the duties and responsibilities of the County and SFCC with respect to the services for the development and implementation of a microgrid lab.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES.

1. AGREEMENT AND DUTIES OF THE PARTIES

The County shall:

- A. Transfer and make available to the SFCC an amount not to exceed Fifty Thousand Dollars (\$50,000.00) for the services to develop and implement a Microgrid Training Center as provided in this Agreement.

Santa Fe Community College shall:

- A. Hire a Microgrid Training Center Director who will perform the following tasks:
- 1) Conduct a needs assessment for the Microgrid Training Center.
 - 2) Design curriculum for Microgrid Certificate and Associates Degree in Science for Microgrid.
 - 3) Establish an advisory panel with educational and industry expertise to review the overall work and progress of SFCC's Microgrid Training Center.
 - 4) Pursue private sector partnerships for funding, equipment and sponsorships to enhance the development of the Microgrid Training Center.
 - 5) Conduct outreach and establish relationships with K-12 school students, administrators and teachers as well as community business partners.
 - 6) Launch the Microgrid Training Center in the SFCC fall semester of 2015.

2. COMPENSATION

- A. In consideration of its obligations under this Agreement, County shall pay Contractor as follows:
- 1) County shall pay to the Contractor in full payment in accordance with the costs indicated on Exhibit A Cost Schedule.
 - 2) Payment to SFCC for the services to develop and implement a Microgrid Training Center an amount not to exceed Fifty Thousand (\$50,000.00) Dollars, exclusive of gross receipts tax.
 - 3) This amount is a maximum and not a guarantee that the work and services assigned to be performed by the Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor shall notify the County when the services provided under this Agreement reach the total compensation amount.
- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting

the contractual items or services, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- C. In the event Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

3. TERM

This Agreement shall, become effective upon last signature and approval of the parties to this Agreement. The term of this Agreement is from the date of signature by the parties and shall terminate one (1) year later, unless earlier terminated pursuant to paragraph 4 below. In no event shall the Term of this Agreement exceed a term of two (2) years in total. The County has the option to extend the Term of this Agreement for one (1) year by providing thirty (30) days written notice to SFCC.

4. TERMINATION

- A. Termination of Agreement. This Agreement may be terminated by the either party upon written notice at least thirty (30) days prior to the intended date of termination. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
- B. Termination of Agreement for Cause. If a party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if a party violates any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party shall thereupon have the right to suspend or terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of termination. Notwithstanding the above, no party shall be relieved of liability to the other party for damages sustained because of any breach of the Agreement.

5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the SFCC. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the SFCC for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's

decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the SFCC.

6. LIABILITY

Neither SFCC nor the County shall be liable for any claims, action, demand, suit or judgment arising from the other party's performance under this Agreement or the performance of the other party's agents, officers or employee. Both parties shall only be liable for any claim, action, demand, suit or judgment arising from its own performance under this Agreement or the performance of its agents, officers or employees.

7. STATUS OF THE SFCC AND THE COUNTY

The County and SFCC are separate legal entities. The SFCC's agents and employees are not employees or agents of the County. The County's agents and employees are not employees or agents of the SFCC. No powers of the County or the SFCC express or implied shall be granted to the other party except those specifically set forth herein.

8. NEW MEXICO TORT CLAIMS ACT

By entering into this MOA, the County is not be responsible for any liability incurred as a result of SFCC's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement by the County is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The County and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

9. NO THIRD PARTY BENEFICIARIES

By entering into this MOA the County and SFCC do not intend to create any right, title or interest in or for the benefit of any person or entity other than the County and SFCC. No person shall claim any right, title or interest under this MOA or seek to enforce this MOA as a third party beneficiary of this MOA.

10. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

- A. County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

11.AMENDMENT

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

12.NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Santa Fe Community College
Office of the President
6401 Richards Ave
Santa Fe, NM 87508

13.FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

14. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15.COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY

Katherine Miller 10.24.14
Katherine Miller Date
County Manager

APPROVED AS TO FORM

Gregory S. Shaffer 10-10-14
Gregory S. Shaffer Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez 10/13/14
Teresa C. Martinez Date
Santa Fe County Finance Director

CONTRACTOR

R. W. Davis 10-22-14
Date

FEDERAL IDENTIFICATION NO.

1615

ATTACHMENT A

COST SCHEDULE

Task Number	TASK	DATE OF COMPLETION	COST
1	Conduct needs assessment for the Microgrid Training Center	December 30, 2014	\$10,000.00
2	Design curriculum for Microgrid Certificate and Associates Degree in Science for Microgrid	On-going	
3	Establish advisory panel with educational and industry expertise to review the overall work and progress of SFCC's Microgrid Training Center		
4	Pursue private sector partnerships for funding, equipment and sponsorships to enhance the development of the Microgrid Training Center		
5	Conduct outreach and establish relationships with K-12 school students, administrators and teachers as well as community business partners	On-going	
2-5	COMPLETE TASKS 2-5	April 30, 2015	\$30,000.00
6	Launch the Microgrid Training Center in the SFCC fall semester of 2015	September 30, 2015	10,000.00
TOTAL			\$50,000.00

